

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JUAN ALVARADO,

Petitioner,

No. C 12-3731 PJH (PR)

vs.

ORDER OF DISMISSAL

C. GIBSON, Warden,

Respondent.

This is a habeas case brought pro se by a state prisoner. In the initial review order the court noted that petitioner had a previous case unsuccessfully attacking the same judgment, *Alvarado v. Small*, C 99-4228 SBA (PR). As a consequence, the petition here is a second petition. Because it appeared that petitioner had not obtained an order from the court of appeals allowing him to file a second petition, he was ordered to show cause why it should not be dismissed. See 28 U.S.C. § 2244(b)(3)(A).

In response, petitioner contends that his claim comes within an exception to the ban on second petitions for new claims that rely on a new rule of constitutional law made retroactively applicable on collateral review by the Supreme Court. See 28 U.S.C. § 2244(b)(2)(A). That exception, however, does not obviate the need for an order from the court of appeals allowing the petition to be filed, and petitioner does not contend that he has obtained such an order. See 28 U.S.C. § 2244(b)(3)(A) (permission from court of appeals must be obtained before filing second petition permitted under exceptions). The petition is **DISMISSED**. The clerk shall close the file.

IT IS SO ORDERED.

Dated: September 26, 2012.


PHYLLIS J. HAMILTON
United States District Judge